

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DAVID S. WILLIAMS and)
ANGELIKA M. WILLIAMS) CIVIL ACTION NUMBER
)
Plaintiffs) 05C-11-209-JOH
v.)
)
CHARLES W. MANNING and)
TERRI LAMBORN MANNING)

Submitted: November 2, 2008

Decided: March 13, 2009

MEMORANDUM OPINION

*Upon Motion of the Defendants for Remittitur - **GRANTED***

*Upon Motion of the Defendants for New Trial - **DENIED***

*Upon Motion of the Plaintiffs for Remittitur or New Trial - **DENIED***

*Upon Motion of the Plaintiffs for Judgment as a Matter of Law - **DENIED***

*Upon Motion of the Plaintiffs to Strike Defendants' Brief/Motion - **DENIED***

*Upon Motion of the Plaintiffs to Stay the Proceedings for Trial Transcript - **DENIED***

*Upon Motion fo the Plaintiffs to Stay Subject to Posting Supersedeas Bond - **DENIED***

Appearances:

Jeffrey M. Weiner, Esquire, Wilmington, Delaware, attorney for the plaintiffs

William J. Rhodunda, Jr., and Chandra J. Rudloff, Esquire, of Wolfblock, LLP,
Wilmington, Delaware, attorney for the defendants

HERLIHY, Judge

After a five day trial of a bitter dispute between neighbors, a jury returned verdicts involving claims each had made against the other. The plaintiffs, Dr. David Williams and his wife Angelika Williams, sued the defendants, Charles Manning and his wife, Terri Lamborn Manning, for trespass. The Mannings sued the Williams for invasion of privacy and private nuisance.

The Williams' trespass claim was broken down into two temporal segments. One period covered 1988 to 2005. The other was for one day only, November 4, 2005, when Mrs. Manning went on the Williams' property to retrieve her cat, Jammers. For the seventeen year period, the jury awarded the Williams \$10,000.00 in compensatory damages. For the one day trespass, the jury awarded \$375.00. As a single claim covering both times, the jury awarded the Williams \$100,000.00 in punitive damages.

As to the Mannings' cause of action the jury awarded \$1.00 compensatory damages on each of their claims, private nuisance and invasion of privacy. The jury awarded no punitive damages on the invasion of privacy claim, but it did award \$20,000.00 in punitive damages to the Mannings on their claim of private nuisance.

The parties have filed myriad post trial motions. The Mannings have moved to alter or amend, basically for remittitur, the verdicts against them or for a new trial. This Court grants their motion for remittitur subject, of course, to the approval of the Williams, but denies their motion for a new trial.

The Williams move for (1) new trial or remittitur of the punitive damages award against them; (2) judgment as a matter of law on the Mannings' claims for invasion of privacy and private nuisance; (3) the Court to strike the Mannings' brief in support of the motion for a new trial or to alter or amend the judgment; (4) suspension of all proceedings until the Mannings order for counsel and the Court a full trial transcript; and (5) a stay conditioned on them posting a supersedeas bond of \$25,000 to cover the judgment against them.

Factual Background

The Williams live at 9 Fox Hill Lane in Woodale. They bought their lot in 1983. Later they built their home on it and moved into it on 1991. Their trapezoidal shaped lot is approximately 1.7 acres. Their house fronts Fox Hill Lane with most of the surface area behind it. There is a garden area in the back. It slopes steeply down about 35-40 feet from the back of the house to the property owned by the Mannings. The property line is approximately 150-200 feet from the back of the house. There are trees and shrubs in the back of their property. One witness described it as heavily wooded. The property line between the Williams and the Mannings is about 225 feet in length.

The Mannings bought their property, 507 Woodale Road (a private road) in July, 1987. There actually were two lots. The larger lot is generally square shaped and contains a stone house which is about 250 years old. The smaller of the two lots resembles a panhandle that extends out from the larger lot. Their total lot size is 7.1 acres.

For a number of years, the Manning family used the panhandle portion of their property to walk their dog. There is a pathway along the Manning/Williams property line which eventually goes out to Woodale Lane. Occasionally it was used for vehicles, and one time when the nearby Red Clay Creek flooded, the Mannings had to use this “pathway” to get in and out of their property.

In March 2004, the Williams got a topographical survey of their property. The purpose was to locate a drainage pipe to alleviate water collecting on the front of their property and/or running onto it from a neighbor’s property across the street. Some work started on this project, but other neighbors, whose property adjoined one side of the Williams realized the ditch for the pipe was on their property not the Williams. This setback, along with the fact that drainage outlet was to empty at the bottom of the incline near the Mannings’ property, brought the planned project to an end.

But the aborted drainage project prompted the Mannings and the Williams to get surveys of their land. Mrs. Manning said theirs was done in June 2004. The surveyor put in stakes with blue flags. She said when the Williams had their survey done the Mannings’ stakes were removed. Both sets of stakes seemed to be in the same position. Mrs. Williams testified her surveyor put up “no trespassing” signs. Because some of the Williams’ stakes were on the pathway, their location alerted the Mannings that the Williams were claiming a portion of it. For years, the Mannings testified, they believed they owned the strip of land now inside the Williams’ property line. For over two years

they consulted with counsel about obtaining a prescriptive easement to the strip of property.

After the surveys and staking, Mrs. Williams said she would find Mrs. Manning walking on the strip of land and trimming bushes and shrubs on it. She repeatedly asked Mrs. Manning to stop and get off her property.

The dimension of this hotly contested sliver of land that became the searing and toxic focus of this whole case: incredulously, 70-75 feet long by one inch to five feet on the sides.

In January 2005, the Williams placed poles linked by a wire along their property line with the Mannings. On April 1, 2005 the Williams called the New Castle County Police. Doctor Williams took the responding officer to the property line between the Williams and Mannings. The officer observed that poles had been pulled out of the ground and thrown aside. The wire which had connected them was cut. The area where this had been done was on the small contested strip.

The officer later spoke to Mrs. Manning. She mentioned that there was a property line dispute with the Williams but denied being the culprit. In Court, she and Mr. Manning finally admitted they had done the “deed” on March 31st. Although there was a second time the poles were removed and the wires cut, the Mannings denied any knowledge of it.

The two incidents of pole removal and wire cutting, according to the Williams, affected their sense of security. As a result they had constructed along their property line with the Mannings (but not along the property lines of the neighbors on either side of them) a wooden stockade fence. That was completed in June 2005. Because of the 35-40 foot drop from their house to the back of their lot, Mrs. Williams said the fence did not increase their sense of privacy.

In early November 2005, the Williams realized there was a cat in an ash tree on their property. The tree is about 50 feet from the back of their house. They did not know the owner of the cat. Mrs. Williams testified she called several neighbors to find out the cat's owner. Notably, however, Mrs. Williams did not call the Mannings. Then she called the SPCA, the local volunteer fire company and the Humane Society. All said they do not rescue cats from trees. She called her arborist, Gary Iverson, who told her he could not do it that day but could come and rescue the cat several days later.

Jammers was the cat in the tree. He had been missing for a day or two. He belonged to the Mannings. Mrs. Williams said she had seen Mrs. Manning walking with cats, but, as noted above, had not included Mrs. Manning among her calls to neighbors.

On November 4th, Mrs. Manning and her daughter spent the afternoon searching for Jammers. Apparently, Jammers had failed to come home the previous night. After some searching, they found the cat in the ash tree in the middle of the Williams' property. Standing outside of the Williams property, Mrs. Manning used her cell phone to call the

SPCA and the local fire department. Neither organization did cat rescues. Mrs. Manning called her arborist and waited until the arborist arrived to go to the Williams' front door. The Williams were not home as they had gone out shopping. Concerned about the oncoming night, Mrs. Manning had the arborist climb over a deer fence (not the stockade fence) to get to the tree holding the cat. The arborist used spikes attached to his boots to ascend the tree. It was at this time, the Williams family returned home. Dr. Williams testified he saw Mrs. Manning with one foot atop the gate to the deer fence as they arrived. He asked to her to leave but she did not. Dr. Williams went to the back of the house and saw the arborist with his spikes. The cat was eventually rescued; however, both arborists who took the stand testified that the tree suffered puncture wounds from the spikes used by the Mannings' arborist. Both arborists also agreed that it was against professional standards to climb a live tree with spikes.

The Mannings' arborist's spikes, of course, left puncture marks in the tree. While the Williams' arborist was concerned about that damage, the tree survived. The Williams' arborist took photos of the tree showing the spike marks and inspected it for possible damage. That was done on November 10, 2005 for which he charged \$200.00. In January, 2008, he re-inspected the tree and charged the Williams \$175.00.

This law suit was filed days later after the cat-in-the-tree incident, November 22, 2005. The Mannings' primary defense to their actions revolving out of the "border incidents" was possessing a good faith belief in any right to the land via a prescriptive

easement or adverse possession. The Court allowed the Mannings to testify to this belief over objections from Williams' counsel. Notably, however, the actual legal issue of the boundary was resolved eight months prior to trial when this Court granted the Williams' declaratory judgment action, which barred the Mannings from any assertion of adverse possession or prescriptive rights.¹

In June 2007, the Williams installed several cameras on or near the fence separating the parties' two properties. None were directed to the neighbors' properties on the sides of the Williams' land. Two or three cameras were the Panasonic model WV-CW374 and one a Panasonic model 974 with pan-tilt 360° view and other capabilities. Michael Hendrick, who installed them for the Williams, said the 974 did not have all the features operable on it. There were infra-red illuminators on the cameras. The cameras were connected to the Williams' television which made DVR copies of what was shown. However, there was no alarm system whereby an intruder or trespasser would set off a mechanism to alert the Williams to a...trespasser.

Mr. Manning testified he was very upset with the high resolution camera, most likely the 974 model. It appeared to him to be high resolution. He did not know how far the camera could see. He felt upset and insecure, he said. Whenever he came up to the cameras and while on his property, he felt as though he was being videoed. On one occasion he put a ladder up to the fence to get the serial (or model) numbers. Pictures taken by the Williams' system doing this was placed into evidence.

¹ Docket # 83, (February 13, 2008).

Mrs. Manning testified that in April 2007 while walking her dog, she saw the orbital camera. She was alarmed not knowing what it could show. She got the model number and checked it on the internet. According to what she learned (with the Court giving a cautionary instruction limiting the use to her state of mind), the camera was used for large commercial purposes. She learned it had a 22x zoom capability. Further checking indicated one or more of the other cameras had day/night filming capability. Mrs. Manning said what she learned left it unclear if the cameras had audio capability, but, nevertheless, she was concerned the Williams had installed it somewhere the Mannings could not see it.

Mrs. Manning testified about being able to see one or more of the cameras from her bedroom and pictures were introduced showing the camera from that vantage point. When there are no leaves on the trees the camera is clearly visible. Based on her internet research she believed the cameras had a 400 foot range. She introduced pictures taken from her driveway where the cameras are visible. She stated the cameras are also visible from the area where the family spends time outdoors.

Mrs. Manning said she felt “invaded,” “watched,” “spied on,” and “not free to do whatever” she wanted to on her property. As of the trial date, September 24, 2008, the cameras had been there for 545 days. She said she has trouble sleeping and the cameras’ presence affect her walks at night. Guests, she testified, are reluctant to visit them because of the cameras.

During the Mannings' case on their counter-claim, they called Dr. Williams as a witness. Through him several DVDs "burned" from his television's DVR were played. He had selected the days to be burned to DVDs. The defendants were upset because they claimed (1) they had only seen them several days prior to the trial and/or (2) they had requested them in discovery. The DVDs were made defense exhibit numbers 2-5. The only people appearing on these selected DVDs were the Mannings, primarily Mrs. Manning. She was seen walking her dog, riding her mower, and at times, making unflattering gestures.

The Court separated the Williams' claim for compensatory damages on their trespass claim into two parts; one covering 1988 until June 2005, the other for the day of November 4, 2005. The jury awarded compensatory damages of \$10,000.00 for the first and \$375.00 for the second. Their punitive damages claim covered both segments and the jury awarded the Williams \$100,000.00.

The jury awarded the Mannings \$1.00 on each of their invasion of privacy and private nuisance claims. For the latter, the jury award the Mannings \$20,000.00 in punitive damages.

Parties' Contentions

The Mannings first contend that the \$10,000 compensatory award covering the trespass claim of 1988-2005 should be set aside or reduced because there is no evidence to support such a finding. The Mannings argue that because the property line was not

established until a surveyor came onto the property in 2004, a jury could not find that the Mannings trespassed onto the Williams land from 1988 to 2005. They contend that, besides the episode with the cat for which the jury awarded \$375.00 in compensatory damages, there was no evidence before the jury to award other forms of compensatory damages in the amount of \$10,000. The Mannings do not contest the \$375 compensatory award to the Williams which reflected the cost of the services rendered by the arborist to twice inspect the spiked tree.

The Mannings also argue that the punitive damage award of \$100,000 is excessive and should be set aside or reduced. They contend that the record does not evince an intent of the Mannings to harm the Williams family. Therefore, they argue punitive damages should not have been submitted for the jury's consideration.

In the alternative, the Mannings contend the punitive damages in this case are so unreasonable that they must be set aside or reduced. They look to the precedent set by the U.S. Supreme Court's decision set down in *BMW of North America, Inc. v. Gore*.² Taking the framework established by the United States Supreme Court in *Gore*, the Mannings contend the following points: (1) their actions lack reprehensibility; (2) the ratio of \$100,000 in punitive damages compared to the \$10,375 in compensatory damages is too steep; (3) and the punitive damages are excessive in comparison to the dollar figure the Mannings would have owed the Williams under criminal penalties mandated by the Legislature for trespass.

² 517 U.S. 559 (1996), 116 S.Ct. 1589, 134 L.Ed.2d 809.

The Mannings contend they were not afforded an opportunity to present a complete defense to the boundary dispute and the wire post fence incident. They argue that because they could not fully demonstrate their intent to preserve their prescriptive easement rights in the strip of land, the trial was unfair. Related to their defense of good faith belief, the Mannings also complain of not being able to rely on a defense based upon advise of counsel. They claim these defenses would have mitigated or canceled out any intent that they had in trespassing on the Williams' land.

The Mannings take objection to various actions of opposing counsel during trial. They contend that counsel for the Williams, during his opening statement, referenced the poisoning of the Williams' dog around the time period of the cat incident. The Mannings argue this was prejudicial to their case because such a statement insinuated the Mannings were the ones who poisoned the dog.

The Mannings also contend that the jury instructions were biased in favor of the Williams. Additionally, the Mannings assert that the trespass instruction was improper because it was not found in the Restatement of Torts. Further, they argue the Court erred by not providing an adverse inference instruction for the jury's consideration.

The Mannings claim the Williams did not provide adequate discovery. They contend the Williams withheld two-weeks worth of potentially relevant information from the surveillance camera system. Moreover, they contend the video footage provided was to them was strategically given so that the footage portrayed the Manning family in a bad light which, in turn, prejudiced the jury.

Finally, the Mannings argue the initial failure of the Williams to seek damages from 1988 to June of 2005 created error. Here, they note the Williams' first two complaints only centered upon the cat incident and did not seek damages for any other trespasses on the Williams' land. The Court's allowance of the Williams to proceed with this "new" claim was error, they assert.

The Williams contend the monetary damages awarded to them by the jury are fair. They point to various facts and testimony from the trial which a reasonable jury could have used to assess a \$10,000 judgment in compensatory damages. For the punitive damage award of \$100,000, the Williams again point to record and contend there was ample evidence to support it. The Williams also assert there is no Constitutional problem under a *Gore* analysis because the ratio of \$10,375 to \$100,000 is within single digits and is not a double digit ratio. The Williams admit the criminal fine for criminal trespass is \$575; however, they point out the Mannings have neglected to mention that the criminal penalty also incurs a possible 30 day period of imprisonment. Lastly, they assert there was ample evidence for the jury to find reprehensibility on the part of the Mannings, which justified the punitive damages awarded.

The Williams have also filed post-trial motions. The Williams contend they are entitled to a remittitur or new trial relating to the \$20,000.00 punitive damage award against them. In essence, they argue it is grossly disproportionate to the compensatory damages award of \$1.00. The Mannings reply by noting the jury found they had suffered

no damage worthy of anything more than a nominal compensatory award. However, it is the Williams' conduct, they assert, which the jury sought to punish which is the purpose of punitive damages.

Next, the Williams seek judgment as a matter of law on the Mannings' claims for invasion of privacy and/or private nuisance. Their contention is that this Court in a pre-trial ruling³ relied upon a defense expert witness who explained the cameras' capabilities. That witness did not testify at trial, and the Williams assert the trial evidence showed their cameras did not have the far-reaching capabilities the expert indicated. This means there was only speculative evidence about the cameras' features which is not enough to go to a jury on the two causes of action. The Mannings point out that the portions of this Court's earlier opinion referring to their expert, to which the Williams allude, were found in this Court's recitation of the expert's deposition in the section outlining the parties' contentions. In the earlier opinion, the Mannings note this Court referred to a picture Mrs. Manning took from her bedroom showing one of the cameras. That picture and others were introduced at trial. Finally, they note the Williams' expert provided testimony about the cameras capabilities and features.

The Williams' motion to suspend all proceedings is premised on what they allege are the Mannings' incorrect references to trial testimony. As a result, they want the Court not to consider the Mannings' motions until the Mannings have ordered and paid for a

³ *Williams v. Manning*, C.A. No. 05C-11-209 (Del. Super. Sept. 23, 2008).

complete trial transcript. Because of these alleged incorrect references, the Williams have also moved to strike the Mannings' motions. They also want a stay in the proceedings conditioned upon posting a supersedeas bond to cover their maximum potential liability (to prevent interest from accruing).

Applicable Standards

A jury verdict is presumed to be correct.⁴ A verdict should not be set aside as “excessive unless it is so clearly so as to indicate that it was the result of passion, prejudice, partiality, or corruption; or that it was manifestly the result of disregard of the evidence or applicable rules of law.”⁵ Nor should a verdict be set aside “unless it is so grossly excessive as to shock the Court’s conscience and sense of justice.”⁶ In considering whether to upset a jury verdict, the court must yield to the jury when “there is any margin for a reasonable difference of opinion in the matter.”⁷ Finally, a trial court should only grant a new trial unless the verdict is “against the great weight of the evidence.”⁸

On a motion for judgment as a matter of law post-trial, the Court does not weigh the evidence.⁹ The Court views the evidence in a light most favorable to the non-moving

⁴ *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

⁵ *Riegel v. Aastad*, 272 A.2d 715, 717-18 (Del. 1970).

⁶ *Id.* at 718.

⁷ *Burns v. Delaware Coca-Cola Bottling Co.*, 224 A.2d 255, 258 (Del. Super. 1966).

⁸ *Storey v. Camper*, 401 A.2d 458, 465 (Del. Super. 1979)

⁹ *Burgos v. Hickok*, 695 A.2d 1141, 1145 (Del. 1997).

party.¹⁰ If that examination reveals that the facts and inferences would permit reasonable persons to reach but one conclusion, for the moving party, the motion will be granted.¹¹

Discussion

A

Compensatory Damages Awarded to Williams

The first issue before this Court is whether the \$10,000 judgment for compensatory damages awarded to the Williams was within reasonable bounds. The figure represents the total damages awarded by the jury for the Williams' claim of trespass which spanned from 1988 to mid-2005.¹² Because the \$375.00 award was related to the cat incident, the \$10,000 figure must represent the damages incurred by the Williams based upon the Manning's trespasses from 1988 to mid-2005.

In Delaware, an intentional trespass occurs when the plaintiff proves three elements: (1) the plaintiff must have lawful possession of the land; (2) the defendant must have entered onto the plaintiff's land without consent or privilege; and (3) the plaintiff must show damages.¹³

¹⁰ *Triewel v. Sabo*, 714 A.2d 742, 744 (Del. 1998).

¹¹ *Gannett Co., Inc. v. Re*, 496 A.2d 553, 557 (Del. 1985).

¹² Special Verdict Form, Question 1.

¹³ *Cochran v. City of Wilmington*, 77 A. 963 (Del. Super. 1908).

As an initial matter, the Mannings complain that the Court should have limited the span of time from mid-2004 to mid-2005 because the property boundary lines were not known by either party from 1988 to mid-2004. They argue there was no intent on the part of the Mannings because they lacked knowledge they were trespassing when they used the pathway. Further, they argue the walking of their dog and the cleaning of underbrush was ameliorative for the property and did nothing to harm it. Therefore, they argue there were no damages.

While these “intent” arguments may be important for damage considerations, the element of intent for the tort of trespass does look into the state of mind of the actor who enters onto another party’s land. Therefore, the Williams did not need “to prove that the act was done by the defendant with any wrongful intent; it is sufficient if it was without justifiable cause or purpose, though it were done accidentally or by mistake.”¹⁴ Indeed, the Restatement explicitly rejects any defense based upon a mistake or good faith belief: “If the actor is and intends to be upon the particular piece of land in question, it is immaterial that he honestly and reasonably believes that he has the consent of the lawful possessor to enter, or, indeed, that he himself is its possessor.”¹⁵ Therefore, the intent claim was fulfilled when Mannings used the pathway for walking their dog or cleared out brush, which manifested their clear intent to be on the land. The jury was within its

¹⁴ *Quillen v. Betts*, 39 A. 595, 597 (Del. Super. 1897).

¹⁵ Restatement (Second) of Torts § 164 cmt. a (1965).

discretion to find for the Williams' with regard to trespasses during the 1988-mid 2005 period of time.

At trial, actual possession of the land by the Williams was not disputed. Nor was the fact that the Mannings entered the property during that time period. However, the Williams were required to make a showing regarding damages. This Court charged the jury on nominal, compensatory, and punitive damages. The jury was instructed on nominal and compensatory damages in the following manner:

If you find the Williams are entitled to recover for the damages that were proximately caused by any trespass, you should consider the compensation to which the Williams are entitled. The Williams are entitled to be fairly and adequately compensated for any injuries or damages they suffered as a result of any trespass. The Williams may recover compensatory damages for the following damages or injuries as you find appropriate:

1. Harm to their interest in not having anyone trespass upon their property; and
2. Any damages the Williams incurred as a result of any trespass by either Ms. Manning or Mr. Manning or their agent.

The law provides no fixed standard by which to insure the amount of compensatory damages. The amount is up to the jury which hears the evidence and decides the case.

If you do not award damages for the above but find the Mannings' conduct constitutes a trespass but the Williams suffered no injury or damage to justify compensation, as an alternative the Williams may recover nominal damages, usually in the amount of \$1.00.

You will have a special verdict from which breaks down the trespass claim into two parts: 1988-June 2005 and November 4, 2005. Any award of compensatory damages, should you make any, should be divided into these two occasions.¹⁶

¹⁶ Jury Instructions, 10-11.

The jury's return of \$10,000 for the 1988-June 2005 period shows the jury found the Mannings trespassed onto the Williams' land. The figure also demonstrates the jury's belief that these trespasses were more than nominal and occasional in nature.

Compensatory damages are "an award of monetary damages to an injured plaintiff, with the size of the award directly related to the harm caused by the defendant."¹⁷ Thus, the question then becomes whether the Williams were able to prove compensatory damages to a sufficient extent that the jury could reasonably award \$10,000. The Court, after giving great weight to the jury's decision, has determined the jury's damage awards to compensate the Williams' for these particular trespasses are not reasonably related to the harm that was established at trial. In other words, the jury award is against the great weight of the evidence presented.

The Court admits it is unclear as to whether the jury was making its award based on the behavior of the parties before or after the surveying was completed by both parties in the summer of 2004. However, this observation is not troubling upon review because the Court finds a reasonable jury could not award anything but nominal damages for the trespassing that occurred between 1988 to mid-2004 since the boundary lines were not "known" at this time. "Generally, in Delaware, the measure of damages for trespass of land is the difference between the value of the land before the trespass occurred and the

¹⁷ *Jardel Co. Inc. v. Hughes*, 523 A.2d 518, 528 (Del. 1987).

value of the land after the trespass.”¹⁸ The Williams failed to show any damages during this period of time. This, of course, makes sense because the Mannings provided uncontradicted testimony that it was their belief they owned the strip of land. Therefore, the Mannings did nothing to devalue the property. The Williams could not and did not show otherwise.

The Court must now consider whether a \$10,000 compensatory damage award is reasonable based upon the remaining time from mid-2004 to June 2005. It was during this time period that both parties testified to having surveys completed. Accordingly, the jury was allowed to conclude that both parties knew or should have known where the property line was located.

The problem with the \$10,000 award is that the Williams did not offer any testimony concerning any diminution of their property’s value or the value of the wire fence that was destroyed. As a result, the jury could only speculate to those values and the jury’s compensatory award can not be based upon any speculation.

However, the Court does find a reasonable jury presented with the unique facts of this case could have awarded some damages based upon mental anguish testimony which was offered by both Dr. and Mrs. Williams. The Restatement does not preclude plaintiffs from collecting damages based on pain and suffering. “If one is entitled to a judgment for harm to land resulting from a past invasion and not amounting to a total destruction of

¹⁸ *Farny v. Bestfield Builders, Inc.*, 391 A.2d 212, 213 (Del. Super. 1978).

value, the damages include compensation for...(c) discomfort and annoyance to him as an occupant.”¹⁹ The comment on subsection (c) provides additional guidance:

“Discomfort and annoyance to an occupant of the land and to the members of the household are distinct grounds for compensation for which in ordinary cases the person in possession is allowed to recover in addition to the harm to his proprietary interests. He is also allowed to recover for his own serious sickness or other substantial bodily harm.”²⁰

Although the Court is not aware of any Delaware decisions which have previously cited to this principle, this Court is satisfied this case merits its application. The Restatement takes into consideration that while an intentional trespass may or may not cause serious bodily injury, it can, depending on the facts of that case, cause discomfort and annoyance to the one in possession of the land. The Court finds those words to be indicative of the Restatement’s intent to compensate the landowner for any distress that may result from harm to his or her proprietary interest, and the jury was instructed to take these principles into consideration.²¹ Again, the jury, finding a trespass occurred, was charged to find damages which could include any “[h]arm to their interest in not having anyone trespass upon their property.”²² The jury’s verdict reasonably shows the

¹⁹ Restatement (Second) of Torts § 929(1) (1965).

²⁰ Restatement (Second) of Torts § 929(1) cmt. e (1965).

²¹ The Court views the spirit of the instruction to originate from the preeminence that the English legal tradition bestows upon private property and property rights. *See generally Cannon v. State*, 807 A.2d 556, 566-70 (Del. 2002) (Holland, J., dissenting).

²² Jury Instructions, at 10.

Mannings, at the very least, committed a nominal trespass on the Williams' land prior to the 2004 surveys. But after the surveys were completed in mid-2004, the nature of the Mannings' trespass materially changed. What were arguably nominal trespasses previously became deliberate, with an intent to create annoyance. Mrs. Williams testified how she often found Mrs. Manning in the sliver of land pruning bushes or doing other things. There were stakes and no trespassing signs. Mrs. Williams said she asked Mrs. Manning to get off her property each time yet she kept coming back. And, of course, the Mannings trespassed at night to remove the poles and cut the wires along the sliver; an act they denied for two and half years. Several months later after repeated trespass, the Williams built the stockade fence. The Williams had good reason to suspect the Mannings cut the wire and removed the poles, and they had direct knowledge of Mrs. Manning's more-than-rare transgressions on their land. All of this is, of course, quite upsetting. Therefore, harm, an element required by the Restatement for annoyance damages, was sufficiently established at trial.

Furthermore, the fact that the jury viewed the Manning's cutting of the wire fence as egregious behavior (which is evident based upon the punitive damage awards to be discussed later), the jury was entitled to consider how these bad acts affected the Williams family. It is reasonable to assume that the willful conduct of the Mannings reasonably figured into the jury's consideration of annoyance placed upon the Williams.

The Court finds that the Williams' mental anguish testimony to be nearly equivalent to the type of testimony that is often offered by plaintiffs in motor vehicle accidents for pain and suffering awards. Cases such as these, where the plaintiffs offer testimony of such anguish, do not preclude the jury from assessing whether there are damages beyond the out-of-pocket expenses a plaintiff incurs due to a defendant's harm. In *Aleardi v. Tiberi*, the Delaware Supreme Court held that the jury is the ultimate body to affix a monetary amount for damages based on subjective determinations involving pain and suffering.²³ Also, in *Aleardi*, the Court found it was not reversible error to preclude a finding of pain and suffering damages without the aid of a medical doctor so long as the injured party(ies) testified regarding any pain and suffering.²⁴ Therefore, while there was no physical injury in this case, this Court holds that the testimony offered by the Williams describing their annoyance and distress from the trespasses onto their property is sufficient to establish and allow a jury to consider discomfort and annoyance.

The only question, then, is whether the amount of \$10,000 is excessive. Given the testimony of Dr. and Mrs. Williams and also considering the facts and circumstances unique to this case, the Court finds the award to be excessive. Although the Court is aware of importance Anglo-American tradition bestows upon the rights of a property owner, the facts and circumstances of this case compel remittitur.

²³ *Aleardi v. Tiberi*, 269 A.2d 404, 405 (Del. 1970).

²⁴ *Id.* at 406.

First, other than experiencing stress from the trespassing of the Mannings, the Williams did not testify to any severe or any bodily injury; instead, their testimony reflected only “discomfort and annoyance.” While this is worthy of some monetary damages, the Court views \$10,000 as too high an award for minor mental anguish. Second, the Court holds that the degree of annoyance experienced by the Williams must relate to or bear some relation to the harm done to the property that is proven by the plaintiffs. Here, the Williams only proved nominal harm to their property, but did not prove any lessening in their property’s value. Further, the trespass, although it occurred on the Williams’ land, was spatially away from their home, 35-40 feet down a steep hill in a wooded area, and only encroached a few feet into the Williams’ property. Based on these considerations, the Court determines that the \$10,000 award is excessive and finds that an award of \$5,000 would be the highest amount of damages that does not shock the conscious of the Court.

B

Punitive Damages

Punitive damages, as opposed to compensatory damages, are not meant to make the plaintiff whole or place the plaintiff in the position he or she was in before the defendant’s tortious conduct.²⁵ Instead, punitive damages seek to punish the defendant for behavior and conduct that is considered egregious, reckless, reprehensible, or filled with

²⁵ *Jardel*, 523 A.2d at 528.

malice.²⁶ The jury was instructed that such conduct reflected an “I don’t care” attitude.²⁷ Furthermore, punitive damages have been found acceptable as a way to punish the offending party but also as a way to deter similar conduct in the future.²⁸

The Mannings contend that the Williams did not establish egregious conduct from which a jury could conclude this case might merit punitive damages. The Court disagrees.

In *Jardel*, the Supreme Court held “[i]f the evidence supported a reasonable inference of conduct meeting the standard justifying punitive damages,” then the issue could be considered by the jury.²⁹ Furthermore, the evidence must be seen in a light most favorable to the non-moving party for punitive damages.³⁰

There were various acts of egregious conduct: (1) Mrs. Manning’s continued coming onto the sliver of land after it had been staked and being repeatedly told to get off; and (2) coming onto the Williams’ land to remove the poles and cut the wires. The Mannings’ testimony supported a reasonable inference that they cut the wire and pulled up the poles on purpose.³¹ Additionally, the jury was free to consider whether Mrs.

²⁶ *Id.* at 528-29.

²⁷ Jury Instructions, at 12.

²⁸ *Jardel*, 523 A.2d at 529.

²⁹ *Id.* at 527.

³⁰ *Porter v. Turner*, 954 A.2d 308, 312 (Del. 2008)

³¹ In fact, the Mannings testified with great clarity that it was done intentionally—to preserve their right to the land through prescriptive easement. Contrary to their protests

Manning's conduct during the Jammers incident constituted reckless behavior, if not worse. While Mrs. Manning's primary purpose may have been to rescue her cat, the jury was entitled to closely scrutinize her behavior. First, the cat incident occurred months after the ripping out of the pole and wire fence and the subsequent installation of the stockade fence by the Williams. At this point in time, the relationship between the neighbors had completely soured. In light of the relationship between the two parties in November 2005, the jury was allowed to determine whether Mrs. Manning put forth any reasonable effort to contact the Williams family before entering their property. Furthermore, the jury was allowed to assess whether the use of spikes to climb the tree was necessary. The testimony of the parties clearly met the threshold for punitive damage consideration.

After deliberating, the jury found that the Mannings' trespassing behavior was outrageous and egregious, awarding \$100,000 in punitive damages. The Mannings have disputed this figure by citing to the U.S Supreme Court case of *BMW of North America, Inc. v. Gore*,³² arguing that the damages are so excessive that they offend due process. In *Gore*, the plaintiff brought suit against BMW for failing to disclose his car had been repainted before it was sold to him as new. Gore had purchased a new car from BMW unaware it had already been repainted. BMW's policy, at the time, was not to disclose

throughout their briefs, they were allowed to freely testify to this belief.

³² 517 U.S. 559 (1996), 116 S.Ct. 1589, 134 L.Ed.2d 809.

predelivery damages to their dealers if those damages did not exceed 3% of the value of the car. The Alabama jury awarded Gore \$4,000 in compensatory damages and 4 million dollars in punitive damages. The 4 million dollar punitive damage sum was later reduced by the Alabama Supreme Court to 2 million.³³ The Supreme Court, however, ruled that the 2 million dollar figure was still grossly excessive. The high Court in *Gore* established a three part test or “guideposts” for reviewing punitive damages: (1) the degree of reprehensibility; (2) the ratio of the compensatory damages to punitive damages; and (3) the difference between the punitive damages assessed by the jury to civil or criminal penalties.³⁴

Although both parties have submitted *Gore* to argue for damage award reductions, this Court is somewhat hesitant to rely exclusively on *Gore* in this particular case. For example, it is clear that the concerns in *Gore* were influenced greatly by the Supreme Court’s desire to try to impede the ability of a state jury’s punitive damage awards from impacting the policy decisions of large corporate defendants on a national level.³⁵ Because the Williams or Mannings are only residential citizens of Delaware, the issues regarding

³³ *BMW of North America, Inc. v. Gore*, 646 So.2d 619 (Ala. 1994).

³⁴ *Gore*, 517 U.S. at 574-75, 116 S.Ct. at 1598-99, 134 L.Ed.2d at 826.

³⁵ 517 U.S. at 572, 116 S.Ct. at 1597, 134 L.Ed.2d at 824. “We think it follows from these principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors’ lawful conduct in other States.”

state sovereignty, which concerned the Supreme Court in *Gore*, do not exist in this case. Nonetheless, the basic concerns espoused in *Gore* are helpful as guideposts even though this Court is satisfied that remittitur would be proper even if *Gore* had not been decided.

The *Gore* analysis begins with a consideration of reprehensibility. The high Court has stated that “[p]erhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s conduct.”³⁶ However, although the United States Supreme Court stated the reprehensibility standard as potentially the most important, it has also not provided lower courts with much guidance on how to adequately gauge it.³⁷ Our Supreme Court has provided some guiding language on reprehensibility.

“[T]he outrageous conduct may be the result of an evil motive or reckless indifference. In rough approximation, these terms parallel the wilful and wanton standard of the guest statutes. Each refers to a distinct state of mind, one a conscious awareness, the other a conscious indifference. But each requires that the defendant foresee that his unacceptable conduct threatens particular harm to the plaintiff either individually or as part of a class similarly situated.”³⁸

Ultimately, no matter how much time and ink is spent articulating reprehensibility, the jury, not the court, must be given enough flexibility to determine how reprehensible

³⁶ 517 U.S. at 575, 116 S.Ct. at 1599, 134 L.Ed.2d at 826.

³⁷ *Life Ins. Co. of Georgia v. Parker*, 726 So.2d 619, 621 (Ala. 1998). (“the *Gore* opinion does not provide a particular measure for evaluating reprehensibility.”)

³⁸ *Jardel* at 529-30.

the offending party's conduct is and award damages accordingly. While the courts police the jury determination for excessiveness, it should respect the jury's decision of reprehensibility so long as it is supported by evidence at trial. In *Gore*, the Supreme Court found the punitive damages to be excessive because there was no evil motive or egregious behavior behind BMW's decision to not disclose car damages which did not amount to more than 3% of the car's total value.³⁹ Instead, the Court classified BMW's conduct as only causing Gore to suffer a pure economic harm.⁴⁰

Unlike *Gore*, this Court is satisfied the jury found a great degree of reprehensibility on the part of the Mannings. Given the fact that the jury could infer that the Manning's knew or should have known of the boundary line at the time they destroyed the wire fence, the Court is satisfied a reasonable jury could find such behavior outrageous. Further, the jury was allowed to infer that Mrs. Manning's actions during the cat rescue were done with a conscious disregard of the Williams' property rights. In fact, the jury rejected the Mannings' assertion that their entry onto the Williams' property was done with the privilege to rescue the cat.⁴¹ The jury's punitive damage award of \$100,000 to the Williams when compared to the \$20,000 punitive damage award given to the Mannings reflects the jury's assessment of the two parties' reprehensible conduct.

³⁹ *Gore*, 517 U.S. at 580, 116 S.Ct. at 1601, 134 L.Ed.2d at 829.

⁴⁰ 517 U.S. at 576, 116 S.Ct. at 1599, 134 L.Ed.2d at 827.

⁴¹ Special Verdict Form, Question 4, at 29.

However, the second and third guideposts of *Gore* direct a lower court to compare the punitive damages to other monetary figures. As a starter, the second guidepost requires the reviewing court to compare the ratio between compensatory and punitive damages. However, the Supreme Court has never adopted a mathematical formula to determine whether a punitive damage award is presumptively excessive based upon the compensatory award.⁴² Expanding on that principle, the Court stated:

Indeed, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine. It is appropriate, therefore, to reiterate our rejection of a categorical approach.⁴³

Finally, the third guidepost mandates a court to compare the punitive damages to any related civil or criminal sanctions imposed by the legislature. In *Gore*, the Court advised lower courts to give “substantial deference” to these legislative sanctions.⁴⁴

This Court is mindful of the reprehensibility the jury found towards the Mannings’ conduct; however, remittitur of the punitive damages is called for in this particular case. Specifically, the second and third guideposts of *Gore* (the ratio of compensatory to punitive damages and the difference between punitive damages and civil and criminal penalties) are

⁴² *Gore*, 517 U.S at 582, 116 S.Ct. at 1602, 134 L.Ed.2d at 830-31.

⁴³ 517 U.S at 582, 116 S.Ct. at 1602, 134 L.Ed.2d at 831.

⁴⁴ *Gore*, 517 U.S at 583, 116 S.Ct. at 1603, 134 L.Ed.2d at 831.

persuasive in this particular case. Because the Williams' compensatory damages have been reduced to \$5,000, the Court finds that an award of \$100,000 for punitive damages is excessive in light of the compensatory awards and finds that the award should be reduced to \$50,000. Furthermore, the applicable legislative punishment for the Manning's trespasses would have totaled a maximum fine of \$575.00 per offense.⁴⁵ Even though the Court is mindful these offenses allow for 30 days of imprisonment, the Court finds that the comparison of \$575.00, even multiplied several times because of Mrs. Manning's repeated trespasses, to \$100,000 in punitive damages to be too steep.

The Court finds that a reduction from \$100,000 to \$50,000 in punitive damages still reflects the jury's fundamental finding that the Mannings' behavior was more outrageous than the Williams' behavior. In fact, the Court has sought to reduce the compensatory and punitive damages so that it maintains the ten times ratio originally established by the jury. Additionally, the \$50,000 punitive award still represents 2.5 times greater penalty against the Mannings when compared to the \$20,000 punitive damage award. The Court believes this figure, while reduced, still conveys the jury's intent to punish the Mannings for their conduct and effectively enhance any deterrence effects this ruling may have in Delaware.

C

Mannings' Arguments for New Trial

The Mannings have also argued several points which they believe entitle them to a new trial. For the reasons stated herein, the Court views them as meritless.

⁴⁵ 11 Del. C. § 4206 (c).

First, the Mannings have argued they could not fully defend themselves due to their alleged inability to testify to their belief in a prescriptive easement. Along with this claim, they also argue they were barred from asserting a defense based upon advise of counsel. This is simply incorrect. The record is replete with instances of where the Court allowed both Mr. and Mrs. Manning opportunities to testify to their good faith belief including that they were conferring with counsel about prescriptive easements. Because this Court settled the issue of prescriptive easement before the trial, the Court sought to keep the Mannings from presenting the jury any evidence that such a right was still being disputed. However, the Court also prevented the Williams' from presenting any evidence to the jury that such a finding had been ordered, especially from this judge. The Court finds no basis to change these rulings.

The Mannings have also contended the jury was improperly instructed on the law of trespass because the instruction was not found within the Restatement and that the instruction "basically forced the jury to find a trespass in light of the fact that the Mannings were not able to introduce their good faith defense."⁴⁶ In addition to their complaint of the trespass instructions, the Mannings have generally argued their objection to the jury instruction process, which they argue heavily favored the Williams.

This case was unique for the Superior Court to handle for various reasons. One of those reasons was this Court, which is in possession of a myriad of Pattern Civil Jury

⁴⁶ Defs.' Motion for New Trial, 20 (emphasis added).

Instructions, did not have an instruction for either trespass or private nuisance. As a result, this Court devised the instructions based on the Restatement language which has been previously cited in this opinion.⁴⁷ However, both parties were able to air any grievances they had regarding those instructions at the prayer conference. Lastly, this Court views the Manning's "real" complaint regarding the instruction is simply their repackaged argument of not being able to "fully" state their good faith belief in a prescriptive easement and defense of advise of counsel. This argument has already been addressed and found to be lacking to the extent that such defenses are strictly precluded as defenses by the Restatement. The Court finds the instructions were not "biased" but based upon the applicable principles regarding trespass.

⁴⁷ TRESPASS

The Williams claim the Mannings and/or their agent trespassed on their land. Let me define what that means:

A trespasser is a person who intentionally enters upon the real property of another person without the other person's consent. A person who, irrespective of intent, enters upon real property which at the time is enclosed, fenced or otherwise containing posted warnings against entry is presumed to have entered without consent. In addition, a person who enters a real property with consent may become a trespasser by remaining upon the real property of another person after that other person has communicated to the first person not remain on the property.

As to the cat incident on November 4, 2005, the Mannings have asserted they had a privilege to enter the Williams' land and reclaim their property, specifically their cat, from the Williams' property. Mrs. Manning and/or her agent would be privileged to enter the Williams' property, at a reasonable time and in a reasonable manner, for the purpose of retrieving the cat that she is entitled to have in her immediate possession, and which came onto the Williams' land in a manner other than through no fault of the Mannings. If however, Ms. Manning, or her agent entered at a reasonable time and in a reasonable manner the Williams' land but, nevertheless, did thereafter an unnecessary or unreasonable harm, or causes harm in an unreasonable manner while he or she is attempting to exercise the privilege then Ms. Manning is subject to liability for such harm.

The Court did not err when it allowed the Williams' trespass claim to be presented in two parts, specifically, the damage claim for the period 1988 to June 2005. While the first two complaints filed by the Williams did mention one date, the day Jammers was rescued from the tree, both referenced other times of alleged trespass. Further, the pre-trial stipulation⁴⁸ set out two time periods for which damages were being sought. Those are the same two time periods ultimately submitted to the jury, and there is no indication the Mannings raised an objection to those two issues being so listed in the pre-trial stipulation.

The Mannings also argue that the Williams violated discovery obligations for their failure to meet their request of video footage from the Williams' surveillance system. Instead, they argue, the Williams supplied the Mannings with footage that put them in a bad light. The video footage showed Mrs. Manning: (1) mowing the yard, (2) grabbing her buttocks, and (3) making other obscene hand gestures. In order to obtain a missing evidence instruction, the Court must find that the Williams' recklessly or intentionally destroyed evidence.⁴⁹ In other words, the party asserting the use of such an instruction has the burden to prove fault based upon the other party's actions.⁵⁰

⁴⁸ Docket # 42.

⁴⁹ *Sears, Roebuck and Co. v. Midcap*, 893 A.2d 542, 550 (Del. 2006).

⁵⁰ *Id.*

Here, the Williams were asked in discovery for “any and all recordings” from the camera system. This was objected as burdensome. However, thereafter the Mannings did not seek a motion to compel. The Williams testified that the recording system only retained roughly two or three weeks of video footage before that previously recorded footage was recorded over with new footage. The Court finds this does not show any fault on the part of the Williams. To the extent the discovery request called for video footage, the Williams supplied video from April 19, 2008 and supplemented that with still photos from three other dates. To the extent that the burden lies on the Mannings to show fault, this Court was unconvinced of any ulterior motive to destroy video material. In light of the Mannings’ reluctance to seek a motion to compel earlier in the discovery proceedings and then only complain of the lack of video footage until the final weeks before trial, the Court still finds a missing instruction evidence was not warranted. Finally, the Mannings introduced the DVDs showing themselves during their own case. Any post-trial objection seems questionable, at best.

Lastly, the Mannings argued that counsel for the Williams tainted the jury by stating the Williams’ dog was poisoned and, thereby inferring that such poisoning was done by the Mannings. This Court, however, immediately restrained counsel from proceeding on this line of argument and the jury was instructed to disregard this comment and any inferences from it. The Court will assume that these instructions cured any error and were followed by the jury.⁵¹

⁵¹ *Redden v. State*, 2009 WL 189868, at *2 (Del. January 14, 2009) (TABLE)

D

The Williams' Motions

The Williams' motion for remittitur or new trial on the \$20,000.00 punitive damage award against them raises similar analytical issues discussed above concerning the punitive damage award against the Mannings. An obvious difference, of course, is that the jury awarded \$1.00 in compensatory damages. This is anything but a ten to one ratio. As the Mannings did, the Williams rely on *Gore*.

It is important to repeat the punitive damage given to the jury on the Mannings' claim against the Williams.

PUNITIVE DAMAGES

If you decide to award compensatory damages to the Mannings on their invasion or privacy claim and/or their claim for private nuisance, you must determine whether the Williams are also liable to the Mannings for punitive damages.

Punitive damages are different from compensatory damages. Compensatory damages are awarded to compensate the Mannings for the injury suffered. Punitive damages, on the other hand, are awarded in addition to compensatory damages for the purpose of punishing the person doing the wrongful act and to discourage such persons and others from similar wrongful conduct in the future.

You may award punitive damages to punish the Williams for any outrageous conduct, if you find such conduct, and to deter them, and others like them, from engaging in similar conduct in the future if you find by a preponderance of the evidence that the Williams acted intentionally or recklessly. Punitive damages cannot be awarded for mere inadvertence, mistake, errors of judgment and the like, which constitute ordinary conduct.

Intentional conduct, when it applies to punitive damages, refers to conscious awareness. Reckless conduct refers to conscious indifference. Each requires that the Williams foresee that their conduct threatens a particular harm to another. Reckless conduct is a conscious indifference that amounts to a "I don't care" attitude. Reckless conduct occurs when a person, with no intent to cause harm, performs an act so unreasonable that he or she knows or should know that there is an imminent likelihood of damage or injury that can result.

The law provides no fixed standards for the amount of punitive damages but leaves the amount to your sound discretion, exercised without passion or prejudice. In determining any award of punitive damages, you must consider the following: the reprehensibility or outrageousness of Williams' conduct and the amount of punitive damages that will deter the Williams and others like them. The amount awarded must bear a reasonable relation to the Mannings' compensatory or nominal damages. If you find that the Mannings are entitled to an award of punitive damages, you must state the amount of punitive damages separately on the verdict form.

Again, punitive damages are to punish for outrageous, reckless conduct and to deter such conduct in the future. *Gore's* "guideposts" are not particularly helpful here. In *Gore*, there was no element of outrageous conduct targeted to an individual in the context of an on-going bitter dispute.

The Williams installed one camera in the front of their house and four behind it at the property line with the Mannings. There were no cameras directed toward the neighbors adjoining the sides of their properties. These were no ordinary cameras. They were commercial grade more often than not used in shopping centers, airports, and business locations. They were intentionally directed at the Mannings' property and to an area frequented by them doing normal activities, which the Williams knew.

The Mannings' research of the cameras indicated their significant range and features. That the cameras, in fact, did not have the range and all the features that research revealed is unimportant. First, the Mannings were unaware of that. Second, it was the Mannings' reasonable belief that the cameras had all their features, one with a range of 400 feet. Furthermore, one or more cameras were visible from the Mannings' bedroom six months of the year, and the cameras were installed nearly two years after the last trespass.

The jury's award clearly reflects that it accepted the affect these pointedly placed cameras had on them.⁵² That the Williams could observe through these cameras normal living activities of the Mannings not otherwise visible from their home is another factor the jury could consider. In sum, the Court finds no error in the size of the \$20,000.00 punitive damage award.

The above analysis telegraphs the Court's decision in the Williams' motion for a judgment as a matter of law on the Mannings' privacy and nuisance claims. The Mannings did not need a camera expert, including the witness to which this Court referred in its pre-trial decision. The importance lies in the Mannings' perception of what these cameras could do, not what they may have been able to do as installed. If anything the pictures the Williams took, some of which were introduced at trial, underscores that perception. There is no basis to grant the Williams' motion for judgment as a matter of law on the Mannings' privacy and nuisance claims.

⁵² In a sense, too, the jury was sending a clear signal to take them down.

The Court sees no reason to require the Mannings to get a trial transcript in order to proceed with their motions. Such a motion is unorthodox, and in the context of this case, disturbingly vexatious. The Court had no difficulty writing this opinion without a transcript. Also, the Court sees no basis to grant the Williams' motion to strike.

The "offer" to stay these proceedings premised on posting a supersedeas bond is curious but procedurally impossible. With the exception of the \$2.00 compensatory and \$375.00 trespass verdicts, all other verdicts for both sides were under attack and no assured outcome on any of them. In addition, to have granted it may have compelled the Mannings to do the same thing and at greater expense.

Conclusion

For the reasons stated herein, the Mannings' motion for remittitur of the compensation and punitive damages is **GRANTED**. Therefore, the Williams will have ten days following this opinion whether to accept such reduced damage awards or, in the alternative, there will be a new trial on these issues. The Mannings' motion for a new trial is **DENIED** under these circumstances.

Also, for the reasons stated herein, the Williams' motion for a remittitur or new trial, for judgment as a matter of law, to strike the Mannings' brief/motion for remittitur or new trial; to stay the proceedings until a trial transcript is obtained, and to stay subject to posting a supersedeas bond are **DENIED**.

IT IS SO ORDERED.

J.